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Fifth Amendment to China’s Trademark Law

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The Trademark Law of the People's Republic of China was amended and adopted by the Standing Committee of the twenty-third session of the 14th National People's Congress (NPC) on June 26, 2026 and shall enter into force on January 1, 2027 (hereinafter "the New Law").

The Law had been amended in 2019. The most commented change, at the time, had been the modification of Article 4 which provided that if a trademark is filed in bad faith without intention to use, it shall not be registered. Since then, two drafts have been published, respectively in 2023 and on 27 December 2025. The 2023 draft contained a number of radical changes (such as providing for periodic administrative control of the effective use of registered trademarks) while the 2025 draft was closer to the 2019 version.

The New Law contains some improvements, with a few reasons for concern or regrets.

Expanding the list of protectable signs

The New Law includes a separate chapter on "Conditions of registration of trademarks" and Article 14 adds "dynamic signs" to the list of registrable signs.

This list, which ends with the expression "et cetera", means that the list is nonexhaustive. The suggestion to replace the "et cetera" by "…including but not limited to", which would have been clearer, was not accepted. As a matter of fact, the Trademark Administration Under the State Council (the new name given to the Trademark authority) considers the list as exhaustive (which is at odds with the Supreme People's Court) and refuses to accept the registration of other non-traditional trademarks, such as position marks.

Stronger protection of well-known trademarks

Article 21 brings a long-awaited improvement to the protection of unregistered well-known trademarks. Whether it is registered or not, a well-known trademark shall be protected against the registration or use of an identical or similar sign, not only on the same or similar goods, but also on dissimilar goods (the "cross-class" protection).

Unfortunately, the New Law abandons the amendment proposed in the 2023 draft, which introduced, in the article concerning well-known trademarks, the concepts of "dilution", "tarnishment" and "undue profit", originated from a SPC judicial interpretation of 2009. These terms describing the different types of damage caused to a well-known trademark, are more accurate than the expression "liable to mislead the public" in the New Law. Furthermore, the concept of dilution and undue profit should also apply in cases where a well-known trademark needs to be protected against a similar sign registered for the same category of goods, and not only in cases involving dissimilar goods.

With regards to well-known trademarks, Article 63 of the New Law makes it clear that in the investigation or trial of unfair competition cases, Trademark authority and courts may confirm the well-known status of the trademark. And a new Article 69 provides further that, when a trademark case (of any kind, examination, adjudication or litigation) is handled outside of China, the Chinese Trademark authority may confirm the well-known status of the trademark concerned.

Strengthening the obligation to use registered trademarks

The New Law further defines this obligation to use at the trademark application stage, and after the registration, by penalizing unjustified non-use.

Article 19 of the New Law amends Article 4 of the existing law to read: "No trademark shall be registered if it is not for the purpose of use and is manifestly beyond the need for normal production and business operation." The new wording seems to insinuate that an application should be justified by the operation needs of an existing business. The examiner will, therefore, be able to refuse large numbers of trademarks filed by individuals who cannot justify any business activity at all, and this is expected to dissuade the practice of "trademark hoarding". In the comments to the 2025 draft it was suggested to add the word "protection", which would have corresponded to the need for a business owning a registered trademark, to occupy registration in neighboring classes that may serve as "defensive" trademarks. The suggestion was not accepted.

As regards the consequences of non-use, the new Article 57 grants the Trademark authority a very powerful right. Whereas, in the 2019 Law, the revocation based on non-use for three consecutive years is decided by the Trademark Office upon request of any person (usually, from a trademark applicant whose application is being blocked by the non-used trademark), in the New Law, the Trademark authority may revoke the trademark ex officio, even in the absence of request from a third party. This is quite different to the approach proposed in the 2023 draft where trademark holders were to voluntarily submit a statement of use every five years from the date of registration of the trademark and the Trademark authority conducted random controls. Still, the new possibility to revoke ex officio could become a very powerful tool in freeing up the Trademark Registry.

Finally, Article 78 of the New Law brings a welcome clarification to the consequence of non-use in the context of trademark infringement civil litigation. In the 2019 Law, the plaintiff asserting its trademark right could be asked to show "actual use" of the trademark in the "preceding three years". What remained ambiguous was the exact starting point of the three years. The 2025 draft inserted the words "prior to the institution of the action". The New Law brings the starting point of the three years even farther back to "before the infringing act occurred".

Stepping up efforts to combat malicious registration

Combating malicious registration is one of the priorities of the New Law.

The New Law moves a part of the old Article 44.1 " … or where the registration was obtained by fraudulent or other illegitimate means" and incorporates it into the new Article 19 (which deals with the prohibition to file trademarks with no intent to use). This second pargraph of Article 19 is straightforward: "Applications for trademark registration by fraudulent or other illegitimate means shall be prohibited" and this article can be invoked in all circumstances where bad faith is present.

Article 54 of the New Law provides sanctions – a warning and a fine of up to RMB 100,000 – against those who commit the following "malicious acts, causing adverse effects":

applying for a trademark registration in violation of Article 19,
knowingly filing for a prohibited sign listed in Article 15 (which includes "deceptive signs") and Article 16 (using the name of a place if it is not a geographical indication),
intentionally applying for a trademark in violation of prior rights (such as a well-known trademarks, or a sign already used which has certain influence) or falling under preemptive trademark applications filed by the party with prior relationship with the genuine trademark owner.

Obviously, the terms "knowingly" and "intentionally" will need to be further defined.

Therefore, in the future, whoever files an application to register a trademark by fraudulent or other illegitmate means, or a prohibited sign, or in violation a third party's right…might be punished.

It is hoped that these sanctions may serve as a strong deterrent aganst malicious trademark applicant. However, in the meantime, there is concern that, depending on how these new provisions are to be interpreted, it might be wielded against perfectly legitimate operators.

The comments made on the previous drafts had suggested an additional method to deter bad faith trademark applications. It was suggested that at the end of the litigation, the victim of such malicious behaviors be allowed to claim compensation for the cost incurred. Indeed, administrative and judicial procedures against such malicious applications can be lengthy and costly. This seemed possible by inserting the words “a trademark registration is applied for in bad faith…” in Article 78 of the draft which prohibits the institution of “malicious trademark lawsuits". Unfortunately, this proposition was not accepted. In such case, a new litigation needs to be instituted, based on the Anti-Unfair Competition Law.

Malicious litigation

In practice, the term "malicious lawsuit" is often used to describe the case where the owner of a trademark registered in bad faith abuses the right to file a lawsuit against the real brand owner or user.

In the New Law, the concept is treated as an "abuse of right" in Article 9: "…no party shall abuse its right to harm… the legitimate rights and interest of others.

The 2019 version stipulated in Article 68: "for malicious filing of trademark lawsuits, the People's Court shall impose penalties…. ". The 2025 draft (Article 78) maintained the same stipulation and added that where losses are caused to the other party, civil liability shall also be borne.

During the last reading, members of the Legal Committee observed that the term "malicious litigation" does not exist in the Civil Procedure Law and considered that it was therefore necessary to specify what type of trademark litigation is prohibited by the Trademark Law. In Article 81, they opted for the following: "trademark lawsuit filed by malicious collusion, unilateral fabrication of basic facts or other means". However, "malicious collusion" and "fabrication of facts" are rarely found in the aforementioned types of cases where the registrant of a trademark, registered in bad faith, takes action against the legitimate owner of the mark. It remains to be seen whether this modification will facilitate, or on the contrary, make more difficult, the finding of malice in the initiation of a lawsuit.

Deceptive trademarks and "smart trademarks"

Deceptive trademarks are those that are intrinsincly deceptive (for example, a mark contains the words "hand-made" used on mass-produced goods) and are prohibited for registration and use, as provided in Article 15.8 of the New Law (ex Article 10.1.7 of the 2019 Law). In the 2019 Law, the definition of "deceptive" was "deceptive and likely to mislead the public as to the quality or other characteristics or place of origin of the goods". The New Law is more precise: " …likely to mislead the public as to the quality, craftsmanship, raw material or other characteristics …".

Such modification might further underpin the increasing refusal of trademark applications, not on the ground of being descriptive (Article 17) but on the absolute ground under Article 15. The dispute surrounding the registrability over Geely's car brand "Zeekr" (极氪 in Chinese) is a living example of how far the misinterpretation can go. The examiner refused the "极氪" trademark application because he found that the trademark component "氪", being the name of a gas (Krypton) present in very small quantities in the atmosphere, might lead the consumers to believe that the car contained such gas, thus being deceptive about the raw material of the vehicle. The case had to be pursued all the way to the Beijing High Court until it was decided, finally, that such refusal was unreasonable. It is feared that the current tendency to apply Article 15 (deceptive) instead of Article 17 (descriptive) will be further exacerbated.

In addition to the above, the new Article 84, which provides that "Public officials…who approve trademark registration where the conditions are not met, causing adverse effects…shall be given disciplinary sanction" will probably aggravate the already pervasive refusal of trademark.

Therefore, brand owners need to tread carefully when refiling a new application to extend the range of goods covered by an already registered trademark, as there has been examples of refusal based on deceptiveness for trademarks that had been used for decades.

Despite the lack of definition, "smart trademark" is trending on the social media. The legislator seems to have made a priority to combat such practices: a registered trademark might be later deemed as "deceptive", or, depending how it is used, in what context, in tandem with what additional sign, a registered trademark might be perceived as "deceptive".

The latter situation is directly addressed by Article 56 of the New Law which provides that if a registered trademark is used in a manner that misleads the public, the trademark enforcement authorities shall order rectification and impose a fine. If the misuse fails to be rectified within the deadline, the Trademark authority shall revoke the registered trademark.

Again, verification of the situation of registered trademarks is recommended. Indeed, Article 70 of the New Law provides that any organisation or individual may complain, report violations such as the use of registered trademarks in a way that misleads the public. What might happen, in the future, is a scenario where individuals scrutinizing the usage of trademarks in search of causes of possible deceptiveness, might threaten the trademark holder with report to the Trademark authority, and the public officials, for fear of disciplinary sanctions, might agree to such complaint, issue a warning and impose a fine.

Another point worth noting is Article 70 (use in a misleading manner) which can be compared to the situation addressed in Article 57.1 of the New Law. When a registered trademark is altered, Article 57.1 provides that trademark enforcement department (the Administration of Market Regulation) shall order correction within a specified time limit and impose a fine of not more than RMB 50,000, and if the circumstances are serious, the Trademark authority shall revoke the trademark. A serious problem arises when, as a result of such alteration, the mark becomes confusingly similar to another registered trademark. In such case, the owner of the infringed trademark should be allowed to request the revocation of the altered trademark. Such possibility does not exist in the Law. Many suggestions have been made in the comments to various draft amendments, but to no avail.

Adjustment of procedural provisions

The first modification is that Article 36 of the New Law reduces the period of oppositions from three months to two months. This provision helps shorten the trademark registration cycle, but at the same time raises the bar on trademark monitoring, in particular for foreign right holders.

The most important procedural provision, which is absolutely crucial for the time and cost efficiency of a prosecution case, is the combination of the "suspension of procedures" and the so called "acceptance of change of circusmtances" regime.

Article 41 deals with the suspension of a procedure where the decision hinges on the outcome of another pending case. This concerns, for example, the case where a trademark application is refused by citing a prior trademark and the applicant asks for a review of such refusal, and requests, at the same time, the revocation of the prior trademark. It would be logical to suspend the review until the revocation procedure is finalized. Otherwise, the refusal of the applied trademark could be confirmed even though the obstacle (the prior mark) is eventually removed.

The text of 2019 Law provided that only procedures of review of opposition and invalidation may be suspended. This limited type of procedures, plus the fact that suspension was only optional, and often not applied, created an awkward situation where the People's courts had to rule on the legality of a decision while knowing that, since the making of such decision, the circumstances had changed (for example, there was no more obstacle to the registration of an applied trademark). This is why the SPC published an interpretation in 2017 allowing the courts, when the administration decision was challenged before them, to take into consideration the "changes of circumstances" that had occurred after the decision.

In the 2025 draft, Article 40 extended the type of procedures that could be suspended to all trademark related cases, including refusal review and opposition, and stipulated that as a general rule, such procedures shall be suspended. Such proposed amendment was welcome since it appeared that, if all such procedures were to be suspended, all facts would be clarified at the time of the main decision and, actually, there would even be no need for a judicial challenge.

This may be why the 2025 draft added, in the second paragraph of Article 40, the general principle that the courts will only control the legality of administrative decisions based on the facts prevailing at the time. What seemed to be a abandonment of the "change of circumstances" regime would be, in fact, without consequences since the procedures concerned were, as a rule, to be suspended. Still, commentators of the 2025 draft insisted that this second paragraph should be deleted.

During the last reading before the NPC, the Law Committee deleted the second paragraph on the "change of circumstances", but reinstated the “may be suspended” wording, handing over the reins back to the SPC.

It would be the worst scenario, if, for some reason, the SPC decides to end the "acceptance of change of circumstances" regime that it had installed in 2017. Such a move would remove the obligation to suspend and undermine the "change of circumstances" regime. There is still a glimmer of hope that the new Implementing Regulation could shed some light on suspension rules.

Enforcement

Administrative enforcement is performed by the Administration of Market Regulation (AMR) according to Article 74 of the New Law. In Article 60 of the 2019 Law, in case of infringement, the AMR shall "order the immediate cessation of the infringing act, confiscate and destroy the infringing goods and counterfeiting representations of the registered trademark…". The 2025 draft kept the same wording but deleted the word "destroy". This deletion is maintained in Article 74 of the New Law. The AMR might follow the practice of the Customs who can choose among several solutions (public welfare, sell to the right owner, auction) and avoid destruction unless it is impossible to separate the product from the mark.

CONCLUSION

The main purpose of the law is clearly stated at the outset of Article 1: "protect the exclusive right to use registered trademarks, strengthen trademark administration and regulate the registration and use of trademarks…".

The conundrums faced by the trademark community are bifurcated: the Trademark Registry is overcrowded by too many registered trademarks sitting idle, blocking the registration of new trademarks, while bad faith filings and malicious behaviors remain rife.

To declutter the Trademark Registry, the Trademark authority could leverage the ex officio power to revoke unused trademarks. For instance, it could use such power, in the refusal procedure, requesting each cited trademark owner to justify its use in order to block the registration of a new applied trademark. The unused trademarks could immediately be revoked and the new trademark could be accepted without any need for the applicant to initiate separate revocation procedures. That would settle the matter at one go.

This being said, the Trademark authority has already employed an alternative approach to address the cluttering of Trademarks Registry, by refusing new trademark applications, citing, as much as possible, the "deceptive" ground.

The New Law introduces new sanctions against malicious trademark applications and trademark use. On the bright side, the fear of sanctions could help deter bad actors and whittle down bad faith applications and behaviors.

However, this could be a double-edged sword to legitimate and honest trademark applicants and users, as they will be facing greater uncertainty, with their trademark applications, registrations and use constantly under attacks by rivals or bad actors disguising as overzealous public and being scrutinized under a microscope by the trademark officials who could opt to err on the safe side to avoid disciplinary sanctions.